IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.756 OF 1988

Gautam @ Raju Narsingh Kothari, residing at building No.3, Flat No.48 Neo Shastri Nagar Co.Op. Housing Society Ltd. Mulund (West), Bombay-400082]..Appellant (Ori.Accused No.1)

Vs.

The State of Maharashtra]..Respondent

....

Mr.P.P.Hudlikar for Appellant
Mr.V.B.Konde-Deshmukh A.P.P. for State

....

CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.

DATE : MARCH 8, 2006

ORAL JUDGMENT (PER TAHILRAMANI,J.):

1. Through this appeal, the appellant-Gautam alias Raju Narsingh i.e. original accused no.1 has challenged the judgment dated 20th July, 1988 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 618 of 1985 and Sessions Case No. 888 of 1986. By the said judgment and order, the learned Sessions Judge

convicted the appellant under Section 302 of IPC and under Section 324 read with Section 34 of IPC.

2. Prosecution case briefly stated is as under: . The incident in question took place on 7.7.1985 at about 9.00 p.m. It took place near Sujata Hotel, Mulund, Mumbai. Complainant, injured witness P.W.1 Ashok Shetty and appellant-Raju were on cross terms with each other. On 7.7.1985 at about 9.00 p.m. Ashok Shetty went to Sujata Hotel to have tea. At that time, the appellant-Raju and co-accused Manohar Kadam i.e. Manya (original accused No.2) and co-accused Manoj Kamble (original accused No.3) were standing outside the hotel. After Ashok placed the order for tea, the appellant went to him and asked Ashok to come out. Ashok declined, thereupon, the appellant caught hold of the shirt collar of Ashok and tried to pull him out of the hotel. Ashok managed to free himself and he remained inside the hotel. P.W.2 Vithal Shetty who was employed in Sujata hotel as a Manager, shut the collapsible shutter of the hotel. P.W.1 Ashok directed someone to inform his brother-in-law i.e. deceased Ullal to inform the Police. A little while later, Ullal, Ashok’s brother in law, came

there. Thereafter, Ashok came out of the hotel. Then appellant, Manya and Manoj went to assault Ashok. Manoj had ‘Gupti’ in his hand and with which he tried to assault P.W.1 Ashok but at that time, Sadanand who had a pan-shop just opposite the Sujata hotel, intervened and tried to stop Manoj. In that process, Sadanand got injury by ‘Gupti’ on his left hand. Due to this injury, Sadanand moved aside. Then Manoj assaulted P.W.1 Ashok on his back with ‘Gupti’. At that time, the appellant and Manya assaulted Ullal and Ashok with bare hands. Ullal (deceased) tried to prevent Manoj from assaulting Ashok. Appellant took out ‘Gupti’ from the hand of Manoj and assaulted Ullal on his neck and abdomen with ‘Gupti’. P.W.1 Ashok tried to catch Manya, but Manya bit Ashok on right hand and ran away. Thereafter, the appellant and Manoj also ran away. In the meanwhile, information was received by Mulund Police Station on telephone that ‘Maramari’ was going on near Sujata Hotel. P.W.15 P.S.I. Mulani and staff came to the spot and they took the injured Ullal, Ashok and Sadanand in their jeep to Mulund General Hospital. Ullal’s condition was serious, hence, he was transferred to Sion Hospital where he died in the same night at 00.25

hours. Ashok was examined by Doctor at Mulund General Hospital. However, he refused to get admitted there and instead went to Jasraj Hospital where he was admitted and he was an indoor patient till 11.7.1985. Sadanand was also examined at Mulund General Hospital. As there was no serious injury, he was not required to be admitted. Ullal was not in a condition to make any statement. Police recorded statement of P.W.1 Ashok Shetty in Mulund General Hospital itself. The said statement was treated as F.I.R. (Exhibit-4). The statement of Sadanand was also recorded at Mulund General Hospital itself. The blood stained clothes of Ullal and Ashok came to be seized under panchnama. Sadanand was brought by the police to the scene of incident. There ‘Gupti’ and its cover and blood stains were seen, which came to be seized and scrapping of blood came to be taken from the spot. Thereafter, further investigation was carried out.

3. Original accused no.3 Manoj was arrested by the police on 8.7.1985. The present appellant was arrested by the police on 11.7.1985. However, original accused no.2 Manoj was absconding. On account of this, charge sheet came to be filed only

against Raju and Manoj on 3.10.1985. Thereafter, the case of these two accused persons i.e. Raju and Manoj came to be committed to the Court of Sessions on 23.10.1985. The said case came to be numbered as Sessions Case No. 618 of 1985. Original accused No.2 Manya was arrested on 5.11.1986. Thereafter charge sheet against him came to be filed and his case came to be committed to the Court of Sessions on 24.11.1986. The said case came to be numbered as Sessions Case No. 888 of 1986. Both the cases then came to be tried together.

4. Charge came to be framed against the original three accused under Section 302 read with Section 34 of IPC for causing death of Ullal by means of ‘Gupti’ in furtherance of their common intention. Charge came to be framed against all the three accused persons under Section 324 read with Section 34 of IPC for causing hurt to P.W.1 Ashok Shetty by means of Gupti. So also for causing injury to Sadanand, charge came to be framed against all the accused under Section 324 read with Section 34 of IPC. All the accused pleaded not guilty to the said charges and claimed to be tried. Their

defence was that they were not present at the time of incident and they had no knowledge about the injuries caused to Ullal, Ashok and Sadanand. After going through the evidence adduced by the prosecution, the learned Judge convicted the present appellant for the offence under Section 302 IPC. The other two accused persons i.e. original accused no.2 Manohar and original accused no.3 Manoj came to be acquitted for the offence punishable under Section 302 of IPC. The present appellant in addition to being convicted under Section 302 of IPC, was also held guilty for the offence punishable under section 324 read with Section 34 of IPC for causing injuries to P.W.1 Ashok. Original accused Nos.2 and 3 were held guilty for the offence under Section 324 read with Section 34 of IPC for causing injuries to Ullal and Ashok. Present appellant being aggrieved by his conviction and sentence under Sections 302 and 324 read with Section 34 of IPC, has preferred the present appeal.

5. We have heard Mr.P.P.Hudlikar, the learned counsel for the appellant and Mr.V.B.Konde-Deshmukh, learned A.P.P. for the State. We have

perused the record in the present case as well as judgment and order of the learned Sessions Judge.

6. The conviction of the appellant is mainly founded on the evidence of two injured witnesses i.e. P.W.1 Ashok Shetty who is the complainant in the present case and P.W.7 Sadanand Shetty. P.W.1 Ashok Shetty has stated that he knew accused no.1 (appellant) as he was his neighbour. On 7th July, 1985 at about 9.00 p.m. he went to Sujata Hotel to have tea. Raju (appellant) came to him and asked him why he had come there. Thereupon, Ashok Shetty replied that he had come to have tea. Appellant Raju told Ashok Shetty that he should not have tea and he should go away. However, Ashok Shetty said that he would have tea and then go away. Then appellant Raju caught the shirt collar of Ashok Shetty. Ashok got released his shirt collar from the hands of appellant Raju. Appellant Raju then went outside the hotel where Manya (original accused no.2) and Manoj (original accused no.3) were standing. All three of them then started challenging Ashok to come outside the hotel. Ashok has further stated that at that time hotel Manager Vitthal (P.W.2) closed the collapsible door of the

hotel. Ashok Shetty remained inside the hotel. From inside, Ashok saw one Vijay Kumar and Ashok told Vijay Kumar to inform his (Ashok's) brother-in-law Ullel to inform the police. A little while later, Ullel came outside the hotel. Ullel started pleading with the appellant. At that time, Ashok came out of the hotel. At that time, all the three accused persons came towards Ashok to assault him. However, P.W.7 Sadanand Shetty who ran Pan-shop just outside the hotel, intervened. Original accused no.3 Manoj who had Gupti in his hand, came to assault Ashok Shetty with Gupti. But as Sadanand Shetty intervened, Sadanand got injury of Gupti on his left hand. At that time, appellant and accused no.2 were assaulting Ullal and Ashok with hands. On account of injury, Sadanand moved aside. Then original accused no.3 Manoj assaulted Ashok on his hip with Gupti. Ullal tried to prevent Manoj. At that time, appellant Raju took Gupti from the hand of Manoj and assaulted Ullal on his throat and abdomen. Ashok tried to catch original accused no.2 Manya, however, Manya bit Ashok. Then all the accused persons ran away.

7. The evidence of P.W.7 Sadanand is on the same

lines as that of P.W.1 Ashok Shetty. Sadanand Shetty is also injured in the incident. Both these witnesses were examined by P.W.9 Dr. Sunanda Joshi who was then attached to Mulund General Hospital. These witnesses have given history of assault by Gupti. Dr.Sunanda Joshi has stated that on examination of Ashok, she found following injuries on his person:

> . "Two deep wounds on left buttocks. One and half cm. and the other was two and half cms. There was bleeding. Haematoma was there, measuring around 3" x 5". This wound was shown to surgical Registrar. He explored the wound and found fracture left border of sacrum. Another wound was bite mark on right forearm. The third wound was of a minor contusion, mark on left side of neck."

. Dr.Sunanda Joshi also examined P.W.7 Sadanand Shetty. He had also given history of assault by Gupti. On examination of Sadanand, Dr.Sunanda Joshi found the following injuries on his person:

> . "A superficial linier wound 1" on the left forearm."

. Thus, the version given by both these witnesses, is corroborated by medical evidence.

8. As far as deceased Ullal is concerned, he was also rushed along with two injured witnesses to Mulund General Hospital by P.W.15 P.S.I. Mulani. As he was serious, he was rushed to Sion Hospital. P.W.10 Dr.Udwadia examined Ullal at 12.07 a.m. on 8th July, 1985 and he found that the patient was suffering from shock. The Blood Pressure was not recordable, pupils were semi-dilated and not reacting to light. He was gasping. He had an incised wound of half inch below the umbilicus with blood oozing out. There was another incised wound on the left side of the neck just lateral to the thyroid cartilage artery not palpable. The patient was frothing through the nose and mouth and had extensive nasal bleeding. His abdomen was distended, and rigid. They tried to resusitate the patient. But despite their best efforts, he died at 12.15 a.m. P.W.10 Dr.Udwadia has stated that injury on the patient was such that in the ordinary course of nature, the patient would not survive. P.W.10 Dr.Udwadia has further stated that the injuries could have been caused by a sharp cutting weapon like Gupti (article 7). In the opinion of Doctor Udwadia the cause of death of Ullal was

"Haemorrhagic shock."

9. After the death of Ullal, the post mortem was conducted by P.W.8 Dr.Raju Manek. On external examination, Dr.Manek found following injuries:

1. One in neck half inch to the right of the mid-line. It was two inch in length, verticle and the wound was sutured.

2. Injury below the naval, half inch in length, vertical, extending deep into abdomen.

. In the opinion of Dr.Manek, cause of death was haemorrhagic shock due to stab injuries. He has stated that the injuries seen by him were sufficient in the ordinary course of nature to cause death and the injuries seen by him, could have been caused by sharp weapon or instrument like Article 7.

10. As far as Ullal is concerned, it is clear that death was a homicidal death and from the weapon used for causing the injuries and the part of the body on which the injuries were inflicted, it is clear that case would fall under Section 302 of

IPC. The author of the injuries caused to Ullal is clear from the evidence of the two eye witnesses i.e. P.W.2 Ashok Shetty and P.W.7 Sadanand. In the present case, the FIR has been promptly registered. The incident has taken place at about 9.30 p.m. Soon thereafter, the police reached the spot and they took all the three injured including Ashok to the hospital. There statement of Ashok came to be recorded. Thus, the FIR in the present case has been lodged promptly. The name of the appellant prominently figures in the complaint in which the role played by the appellant has been clearly stated in the complaint. As far as both the injured witnesses are concerned, despite lengthy cross-examination, both these witnesses withstood the cross-examination and have not been shaken. We find the evidence of both the witnesses to be cogent, consistent and trustworthy and hence, we have no hesitation in placing reliance on their evidence.

11. Evidence of both the injured witnesses is also corroborated by the evidence of P.W.2 Vithal Shetty who was the Manager of Sujata Hotel. He is an eye witness to the incident. He has stated that

present appellant was the one who gave fatal blows to Ullal. He has ascribed the same role to the appellant as that stated by P.W.1 Ashok Shetty and P.W.7 Sadanand Shetty. Nothing has been elicited in the cross examination of this witness so as to disbelieve his testimony. Moreover, it is to be noted that this witness was the Manager of Sujata Hotel. The incident has taken place partly in the hotel and partly outside the hotel. P.W.2 Vithal Shetty being the Manager of the hotel, his presence in the hotel premises is natural and he would have every occasion to witness the incident. Thus, we are of the opinion that this witness can be safely relied upon.

12. The appellant has also been convicted under Section 324 r.w. 34 of IPC for causing hurt to P.W.1 Ashok Shetty by Gupti. From the evidence on record of Ashok Shetty, Sadanand and Vithal, it is clear that the appellant shared the common intention with other accused to cause hurt to Ashok Shetty by gupti. Thus, we find that there is ample evidence which implicates the appellant for the offence under Sections 302 and 324 r.w. 34 of IPC. In such case, the learned Sessions Judge has

rightly convicted the appellant.

13. In the result, the appeal is dismissed. The appellant is on bail. Appellant-accused shall surrender before the trial Court within four weeks from today.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]